
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

BILL BRANDEN SPITLER, an individual,
Plaintiff,

vs.

OGDEN CITY CORPORATION (Ogden
City Police Department), a Municipal
Corporation; JUSTON DICKSON, an
individual; and SHAWN GROGAN, an
individual,
Defendants.

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Case No. 1:03cv00119

This civil rights case arises out of an allegation by Bill Branden Spitler, who claims he sustained permanent injuries after two police officers entered his Ogden City, Utah, home and riddled him with “strikes and blows.”¹ Mr. Spitler now seeks damages from Officers Juston Dickson and Shawn Grogan for violations of his civil rights under 42 U.S.C. § 1983 and 42 U.S.C. § 1985. Mr. Spitler’s principal claim is that Officers Grogan and Dickson used excessive force against him.

Officers Grogan and Dickson have moved for summary judgment on all of Mr. Spitler’s

¹Spitler Aff. 5, ¶ 17, Docket No. 69, Exh. 1.

claims. The court must grant summary judgment to the officers with regard to Mr. Spitler's claims of wrongful detention, illegal entry, unlawful arrest, malicious prosecution, and conspiracy to violate civil rights as Mr. Spitler has not met his burden of opposing the officers' motion — he failed to respond to the officers' motion as to those claims at all. However, it is possible that a reasonable jury could find Officers Grogan and Dickson violated Mr. Spitler's constitutional rights by using excessive force against him, so the court does not grant the officers qualified immunity as to that claim.

BACKGROUND

When considering a motion for summary judgment, the court views the evidence in the light most favorable to the nonmoving party.² Viewed in this light, the record reflects the following facts.

On July 10, 2002, police officers from the Ogden City Police Department responded to a report of an argument between Bill Spitler and his brother-in-law, Tony Christensen. Mr. Christensen lived across the street from Mr. Spitler. Apparently, Mr. Christensen had been drinking alcohol and Mr. Spitler prevented him from driving by taking his car keys away. The argument culminated with Mr. Christensen and Mr. Spitler threatening to kill one another. Mr. Spitler called 911 to report the fight at approximately 9:54 p.m. After he responded to the scene, Officer Shawn Grogan spoke with Mr. Spitler. Mr. Spitler assured Officer Grogan there would be no further problems, and Officer Grogan threatened to make an arrest if he was called to the

²*See Cortez v. McCauley*, 438 F.3d 980, 988 (10th Cir. 2006).

scene again. Officer Grogan attempted to contact Mr. Christensen, but Mr. Christensen reportedly had returned to his residence and refused to answer the door.

Around 10:45 p.m., Melanie Spitler, Mr. Spitler's wife, called 911 and reported Mr. Spitler and Mr. Christensen were arguing and threatening each other again. Officer Grogan again responded, along with Officers Juston Dickson and Sherry Johnson. Officers Grogan and Dickson first spoke with Mrs. Spitler, who was standing outside in front of the house. They next attempted to contact Mr. Christensen, but no one answered the door at his residence. Mrs. Spitler then adamantly requested the officers speak with her husband, who was inside his own house. She claimed Mr. Spitler had caused more of a problem than Mr. Christensen.

Mr. Spitler is unclear as to whether the front door of his house was open or closed when Officers Grogan and Dickson approached. However, it is undisputed that at one point, the door was closed and one or both of the officers knocked on the door and requested Mr. Spitler speak with them. Mr. Spitler responded through a small window on his front door, telling the officers they needed to speak with Mr. Christensen. The officers then entered Mr. Spitler's house, although the record is unclear as to exactly how this occurred. Despite the difficulty inherent in reconciling Mr. Spitler's somewhat inconsistent statements, it is reasonable to infer from the record that Mr. Spitler slammed the door on the officers and then, as he reached to open it, both officers forced their way in. According to Mr. Spitler, the force of the officers' entry broke the door handle and frame, cracked the wall, and caused the officers to fall into the house. The edge of the door struck Mr. Spitler's little toe as it opened, breaking it. Officer Dickson testified he possessed no probable cause to arrest Mr. Spitler at the time he spoke with Mr. Spitler through

the door.

Mr. Spitler testified that once they were in his residence, Officers Grogan and Dickson turned out the lights, closed the curtains, and struck him repeatedly. Officer Dickson led the attack by punching Mr. Spitler in the eye with a closed fist. Mr. Spitler testified both officers struck him with such force, it caused him to defecate in his pants and to vomit repeatedly. Mr. Spitler maintained one officer hit him in the eye with the end of a flashlight. Although Mr. Spitler did not actually see the flashlight, he concluded the officers used one because the bruising around his eye was perfectly round. If he fought back at all, Mr. Spitler explained, it was in self-defense. The officers then handcuffed Mr. Spitler and escorted him to a police car, without allowing him to change his pants. While in the car, Mr. Spitler apologized to the officers. Mr. Spitler later explained that he had apologized because at the time, he believed the incident was his fault.

The officers' version of the altercation differs substantially from Mr. Spitler's. Officers Dickson and Grogan claim they struck Mr. Spitler only after Mr. Spitler struck Officer Grogan twice through the open door — the rest of the altercation was an attempt to subdue Mr. Spitler. Taking the facts and all reasonable inferences in the light most favorable to Mr. Spitler, the court finds Mr. Spitler's version to be accurate for the purposes of summary judgment.

At the time of his booking, jail staff noted Mr. Spitler had scrapes and bruises, and a black, swollen, right eye. Jail photographs confirm Mr. Spitler's swollen and bruised eye and show a scrape on Mr. Spitler's left ear, a small bruise on the back of his left arm, and a bruise on the front of his right thigh. Mr. Spitler submitted other photographs as well, but it is unclear

when they were taken. And although the jail staff did not document any other injuries, Mr. Spitler submitted medical letters as evidence of further injury. The court assumes he submitted these letters at the summary judgment stage as circumstantial evidence of the severity of the conflict with the officers. However, the evidence fails to assist the court in this regard. For one thing, Mr. Spitler offered no foundation for the letters in his affidavit or briefs, so their significance is not immediately evident. None of the letters specifically tie Mr. Spitler's injuries or conditions to the altercation of July 10, 2002. For another thing, the letters contain multiple inconsistencies and oddities. Two letters appear to be the second page to some kind of report, and only identify Mr. Spitler in the header. References to dates of vehicle accidents in which Mr. Spitler was involved differ. Two letters are dated previous to events discussed in the letters — they discuss events that according to the dates, had not occurred at the time the letters were written. The date of birth for the patient is inconsistent in the letters and one letter refers to the patient as a thirty-four year-old man named Daniel. Regardless of the letters, though, Mr. Spitler maintains he sustained permanent injuries from the altercation with Officers Grogan and Dickson, including vision loss, a broken tooth, broken toe, a lumbar injury, intensified compulsive obsessive traits, and mental impairment.

DISCUSSION

In response to Mr. Spitler's allegations, Officers Grogan and Dickson have invoked the defense of qualified immunity. After first laying out the standard of review, the court considers the plaintiff's allegations that Officers Grogan and Dickson violated his constitutional rights by using excessive force against him. Next, the court considers the remainder of Mr. Spitler's

claims.

I. Qualified Immunity Standard of Review —

Actions for damages provide an important remedy for those injured by abuse of governmental authority, but such actions also have potential to subject officials to harassing, costly litigation and to inhibit performance of their duties.³ The affirmative defense of qualified immunity balances these competing interests by protecting “all but the plainly incompetent or those who knowingly violate the law.”⁴ Government officials are entitled to qualified immunity “in all but the most exceptional cases.”⁵ Whether qualified immunity exists is a “purely legal question.”⁶

Due to the underlying purposes of qualified immunity, courts evaluate summary judgment motions in qualified immunity cases differently than general summary judgment motions.⁷ After a defendant asserts a qualified immunity defense, the plaintiff has the burden of satisfying a two-part test.⁸ As part of this “heavy two-part burden,”⁹ the plaintiff must establish the defendant’s

³*Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

⁴*Malley v. Briggs*, 475 U.S. 335, 341 (1986).

⁵*Tonkovic v. Kan. Bd. of Regents*, 159 F.3d 504, 516 (10th Cir. 1998).

⁶*Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

⁷*Nelson v. McMullen*, 207 F.3d 1202, 1205–06 (10th Cir. 2000).

⁸*Scull v. New Mexico*, 236 F.3d 588, 595 (10th Cir. 2000).

⁹*Albright v. Rodriguez*, 51 F.3d 1531, 1534 (10th Cir. 1995).

acts or omissions violated a constitutional or statutory right.¹⁰ Next, the plaintiff must show the right at issue was clearly established at the time of the defendant's unlawful conduct.¹¹ In assessing whether a right was clearly established, the court must look at the objective legal reasonableness at the time of the challenged action and ask if "the right [was] sufficiently clear that a reasonable officer would understand that what he [was] doing violate[d] that right."¹² If the plaintiff succeeds in demonstrating a violation of a clearly established right, the defendant has the burden to prove "there are no genuine issues of material fact and he or she is entitled to judgment as a matter of law."¹³

Although the court views the evidence in the light most favorable to the nonmoving party, the record must clearly establish the plaintiff has satisfied its heavy two-part burden; otherwise, the defendants are entitled to qualified immunity.¹⁴ Mr. Spitler has met his burden with regard to his excessive force claim, but not with regard to his other claims.

A. Excessive Force Claim

Mr. Spitler alleges Officers Grogan and Dickson should face § 1983 liability for using excessive force against him. To assess an excessive force claim, the court first must evaluate the

¹⁰*Id.*

¹¹*Id.*

¹²*Wilson v. Layne*, 526 U.S. 603, 615 (1999).

¹³*Albright*, 51 F.3d at 1535 (citing *Hinton v. City of Elwood*, 997 F.2d 774, 779 (10th Cir. 1993)).

¹⁴*Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001).

context of the claim.¹⁵ Courts analyze state actors' use of force in the course of a seizure under the Fourth Amendment's reasonableness standard.¹⁶ A person is seized under the Fourth Amendment when a reasonable person in the circumstances "would believe that he or she is not free to leave."¹⁷ Only if a specific constitutional provision, such as the Fourth Amendment, does not apply, does the court evaluate the claim under the substantive due process test of the Fourteenth Amendment.¹⁸ In this case, the Fourth Amendment reasonableness standard applies. Taking the facts in the light most favorable to Mr. Spitler, the officers seized Mr. Spitler as soon as they entered his home. Allegedly, at the moment of their entry, the officers began using force against Mr. Spitler. Under those circumstances, a reasonable person would not have felt free to leave or to ask the officers to leave. As Mr. Spitler was seized at the moment of entry, a Fourth Amendment inquiry is appropriate.

To succeed on a Fourth Amendment claim of excessive force under § 1983 when the defendants claim entitlement to qualified immunity, the court must first determine if, taken in the light most favorable to plaintiff, the facts alleged show the officers' conduct violated a constitutional right.¹⁹ This is because if the plaintiff were able to establish the violations he alleged and yet no rights were violated, there is no need for further inquiries into qualified

¹⁵*See Roska v. Peterson*, 328 F.3d 1230, 1242 (10th Cir. 2003).

¹⁶*Id.* at 1230.

¹⁷*Id.* (citation and internal quotation marks omitted).

¹⁸*Id.*

¹⁹*Saucier v. Katz*, 533 U.S. 194, 201 (2001).

immunity.²⁰ Once the plaintiff has shown his rights were violated, the court must determine if the violated rights were clearly established.

To show his rights were violated, Mr. Spitler must show the force used against him was unreasonable. “[U]se of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness.”²¹ Reasonableness is a totality-of-the-circumstances inquiry²² and is assessed “from the perspective of a reasonable officer on the scene, acknowledging that the officer may be forced to make split-second judgments in certain difficult circumstances.”²³ In evaluating reasonableness of force, the court focuses on factors such as “the alleged crime’s severity, the degree of potential threat that the suspect poses to an officer’s safety and to others’ safety, and the suspect’s efforts to resist or evade arrest.”²⁴

Viewing the facts in the light most favorable to Mr. Spitler, a reasonable jury could find Officers Grogan and Dickson used unreasonable force against Mr. Spitler, violating his Fourth Amendment rights. It is uncontested that both Officer Grogan and Officer Dickson used force against Mr. Spitler — both officers admit to striking him. And Mr. Spitler paints the picture of a severe, unprovoked attack. The officers responded to Mr. Spitler’s house to investigate alleged threats Mr. Spitler made to his brother. Mr. Spitler cannot be said to have posed an imminent

²⁰*Id.* at 201.

²¹*Id.* at 198.

²²*Phillips v. James*, 422 F.3d 1075, 1080 (10th Cir. 2005).

²³*Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1314 (10th Cir. 2002) (citation omitted).

²⁴*Id.* (citing *Medina*, 252 F.3d at 1131).

threat to Mr. Christensen, the other party to the alleged crime, because when the officers responded to the scene, Mr. Christensen was not in Mr. Spitler's physical presence. On Mr. Spitler's version of the facts, it cannot reasonably be inferred that Mr. Spitler posed a threat to the officers' safety or that the officers "were in danger at the precise moment that they used force."²⁵ This is because on his version of the facts, there is no indication Mr. Spitler verbally or physically threatened either Officer Grogan or Officer Dickson, or that Mr. Spitler possessed any weapons. Instead, Mr. Spitler refused to engage with the officers personally — he kept the door closed and spoke through the door. At most, this can be seen as an attempt to resist or evade face-to-face contact with the police. While it may have been unsettling for the officers to not be able to fully observe Mr. Spitler behind the door, without an indication he posed a threat, a reasonable jury could find Mr. Spitler's avoidance is not enough to merit a severe, physical attack. Officer Dickson admitted he had no probable cause to arrest Mr. Spitler for making threats, Mr. Spitler was never charged with making threats, and there is no indication the officers sought to arrest Mr. Spitler before the altercation.

To add to the picture, Mr. Spitler explained a disability from a neurological brain injury causes him to react slowly to stimuli. He claimed the disability was known or reasonably should have been known to the officers. Moreover, Mrs. Spitler allegedly provided the officers with extra notice of Mr. Spitler's disability by warning them of Mr. Spitler's brain injury before they entered the house. This may make the officers' immediate use of force against Mr. Spitler even

²⁵*Phillips*, 422 F.3d at 1083.

less reasonable. On these facts, a jury could reasonably find the officers' use of force violated Mr. Spitler's right to be free from the use of excessive force.

When read favorably to Mr. Spitler, not only does the record demonstrate that a reasonable jury could find Officers Grogan and Dickson violated Mr. Spitler's constitutional rights, it also demonstrates his rights were clearly established. The Tenth Circuit has concluded the § 1983 reasonableness standard for excessive force actions is "clearly established."²⁶ However, the qualified immunity inquiry "has a further dimension."²⁷ The Supreme Court has explained that qualified immunity allows for reasonable mistakes because officers can have difficulty determining how the excessive force doctrine applies to the real-world situations they confront.²⁸ "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted."²⁹

In *Brussow v. Rodin*, this court denied summary judgment to police officers who claimed entitlement to qualified immunity on an excessive force claim.³⁰ In *Brussow*, Salt Lake City police officers arrested the plaintiff, placed him in handcuffs with his arms behind his back, and

²⁶*Layton Hills Mall*, 312 F.3d at 1314.

²⁷*Saucier*, 533 U.S. at 205.

²⁸*Id.* at 205.

²⁹*Id.* at 202 (citation and internal quotations omitted).

³⁰2006 U.S. Dist. LEXIS 47777, *17–18 (D. Utah July 13, 2006).

placed him in the back seat of a police car.³¹ While in the back seat, the plaintiff moved his handcuffs under his feet so his hands were in front of him.³² When the officers noticed, they pulled the plaintiff from the car and threw him to the ground.³³ One officer pinned the plaintiff's head to the pavement and the other moved the plaintiff's hands under his legs, repositioning his hands behind him.³⁴ The plaintiff did not resist the officers' actions.³⁵ The plaintiff suffered abrasions on his hands and the right side of his body, and a swollen wrist.³⁶ Concluding the plaintiff had not actively tried to escape, this court decided a jury could reasonably find the officers used excessive force in moving the plaintiff's handcuffs.³⁷

Viewing the facts in the light most favorable to Mr. Spitler, a jury could find facts showing that a reasonable officer in Officer Grogan and Officer Dickson's situation would know his conduct was unlawful. It would be clear to a reasonable officer that repeatedly striking Mr. Spitler without provocation or a showing that he posed an imminent threat violated Mr. Spitler's rights. Just as in *Brussow*, the court cannot infer Mr. Spitler actively resisted or tried to escape. Even though Mr. Spitler refused to open the door, he verbally responded to the officers. His

³¹*Id.* at *7.

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷*Id.* at *17.

refusal to open the door amounted to less active resistance than the plaintiff in *Brussow*, who actively changed the location of this handcuffs. And the officers' actions against Mr. Spitler were far more severe than those against the plaintiff in *Brussow*.

Additionally, in this case, there is no indication the officers made a reasonable mistake regarding the appropriateness of the force they used. The officers do not even allege the existence of any such mistake. For example, there is no indication the officers reasonably believed Mr. Spitler was likely to fight back — a scenario that may allow for the use of more force than actually necessary.³⁸ Mr. Spitler simply remained in his home, unwilling to open the door to engage with the police officers. Similarly, there is no indication the officers gave Mr. Spitler lawful orders with which he refused to comply, thereby creating the need for the use of force. If the facts as alleged by Mr. Spitler are true, it is not clear the officers could justifiably use *any* force against Mr. Spitler. Therefore, a jury could find it would be clear to a reasonable officer that Officer Grogan's and Officer Dickson's conduct was unlawful in the circumstances.

Accordingly, the court finds — if Mr. Spitler could establish his allegations — that Officers Grogan and Dickson violated Mr. Spitler's constitutional rights as a matter of law and the violated rights were clearly established under the circumstances. The court, therefore, cannot grant summary judgment to the officers on the excessive use of force claim. In reaching this conclusion, the court need not conclude Mr. Spitler has a strong claim against the officers. To the contrary, the court believes the jury is quite likely to find in the officers' favor. But the

³⁸*Saucier*, 533 U.S. at 205.

limited issue before the court is whether to grant the motion for summary judgment. The court finds it cannot grant the motion.

B. Other Claims

The court grants summary judgment to the officers on the claims of wrongful detention, illegal entry, unlawful arrest, malicious prosecution, and conspiracy to violate civil rights, as Mr. Spitler failed to respond to the officers' motion as to these claims. As part of Mr. Spitler's "heavy two-part burden"³⁹ in opposing a claim of qualified immunity, Mr. Spitler must establish the officers' acts or omissions violated a constitutional or statutory right and the right was clearly established at the time of the officers' conduct.⁴⁰ The court must grant qualified immunity to the defendants if Mr. Spitler neglects to satisfy either part of the inquiry.⁴¹

It is not the job of the court to construct a party's arguments for him.⁴² Accordingly, Mr. Spitler's failure to address the officers' motion for summary judgment as to the claims of wrongful detention, illegal entry, unlawful arrest, malicious prosecution, and conspiracy to violate civil rights, proves fatal to these claims. In his brief, Mr. Spitler even conceded "[t]his matter is admitted[ly] an excessive force case."⁴³ And in his affidavit, Mr. Spitler asserted paragraph fifteen of his Complaint "clearly" states the nature of his claim — the use of

³⁹*Albright v. Rodriguez*, 51 F.3d 1531, 1534 (10th Cir. 1995).

⁴⁰*See id.*

⁴¹*See id.* at 1535.

⁴²*See Perry v. Woodward*, 199 F.3d 1126, 1141 (10th Cir. 1999).

⁴³Pl.'s Memo. in Opp'n to Defs.' Mot. for Summ. J., at xi., Docket No. 70.

unreasonable force.⁴⁴ Because the record shows Mr. Spitler failed to meet his prima facie burden with respect to the remainder of his claims, the court must grant summary judgment to the officers. _____

_____ At the hearing on October 17, 2006, Mr. Spitler's counsel argued against the court's tentative disposition of his illegal entry claim. Counsel conceded he failed to argue the point extensively in his brief, but asserted that he had addressed it sufficiently to proceed on the claim. Counsel pointed to a portion of Mr. Spitler's memorandum in opposition to the motion for summary judgment stating the officers had forcibly entered Mr. Spitler's home without possessing a warrant or showing exigent circumstances existed.⁴⁵ However, this reference to illegal entry was presented in the context of alleged inconsistent claims by the officers with regard to the use of force against Mr. Spitler, not as an independent challenge to the legality of officers' entry. For instance, the sentence following this reference to illegal entry relates to the officers hitting Mr. Spitler. As Mr. Spitler failed to meet his prima facie burden with regard to his illegal entry claim, his claim fails.

CONCLUSION

Based on the foregoing, the court GRANTS the officers' motion for summary judgment on Mr. Spitler's claims of wrongful detention, illegal entry, unlawful arrest, malicious prosecution, and conspiracy to violate civil rights, but DENIES summary judgment on his claim

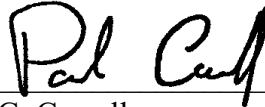
⁴⁴Spitler Aff. 2, ¶ 3, Docket No. 69, Exh. 1

⁴⁵See Pl.'s Memo. in Opp'n to Summ. J. 6, Docket No. 70.

of excessive force. Therefore, the Defendants' Motion for Summary Judgment [#59] is granted in part and denied in part.

DATED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

JAMES MORGAN FITTS

JUDGMENT IN A CRIMINAL CASE

2006 OCT 18 1:59

DISTRICT OF UTAH

Case Number: DUTX 105CR000154 -001

USM Number: 13208-081

Jeremy Delicino

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(9)	Possession of a Firearm Following a Domestic Violence Conviction		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/17/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

10/18/2006

Date

DEFENDANT: JAMES MORGAN FITTS
CASE NUMBER: DUTX 105CR000154 -001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Time-served

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES MORGAN FITTS

CASE NUMBER: DUTX 105CR000154-00\

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES MORGAN FITTS
CASE NUMBER: DUTX 105CR000154 — 001

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
- 2) The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: JAMES MORGAN FITTS

CASE NUMBER: DUTX 105CR000154-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAMES MORGAN FITTS
CASE NUMBER: DUTX 105CR000154 -001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION**

**PHILLIP M. ADAMS & ASSOCIATES,
LLC**, a Utah Limited Liability Company,
Plaintiff,

v.

**DELL INC., FUJITSU LIMITED,
FUJITSU COMPUTER SYSTEMS CORP.,
INTERNATIONAL BUSINESS
MACHINES CORP., LENOVO (UNITED
STATES) INC., MPC COMPUTERS, LLC,
AND SONY ELECTRONICS, INC.**

Defendants.

Civil Action No. 1:05-CV-64

The Honorable Ted Stewart

Magistrate Judge David Nuffer

**INTERNATIONAL BUSINESS
MACHINES CORPORATION**, a New York
corporation,
Counterclaim-Plaintiff,

v.

**PHILLIP M. ADAMS & ASSOCIATES,
LLC**, a Utah Limited Liability Company, and
PHILLIP M. ADAMS, an individual,
Counterclaim-Defendants.

**ORDER OF DISMISSAL OF
CERTAIN PARTIES**

Pursuant to Federal Rule of Civil Procedure 41, and based on the Stipulation of Dismissal with Prejudice by and among Phillip M. Adams & Associates, L.L.C. (“Adams Associates”), Phillip M. Adams (“Adams”) and Lenovo (United States) Inc. (“Lenovo”),

IT IS HEREBY ORDERED:

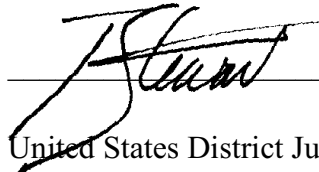
1. All claims presented by the Amended Complaint, as well as all counterclaims presented by Lenovo against Adams Associates and Adams, shall be voluntarily dismissed with prejudice as to each of Lenovo, Adams and Adams Associates;

2. The Stipulation and Order entered July 20, 2005, dismissing Lenovo Group Ltd. without prejudice, is hereby amended and effective as of the date hereof as a dismissal of Lenovo Group Ltd. with prejudice; and

3. Lenovo, Adams, and Adams Associates shall bear their own costs and attorney's fees.

SO ORDERED:

Dated: October 19, 2006


United States District Judge

APPROVED AS TO FORM:

/s/ Catherine Agnoli

Catherine Agnoli

PARSONS BEHLE & LATIMER

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Redwood Shores, California 94065

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Attorneys for Lenovo (United States) Inc.

/s/ Gregory D. Phillips

(signed by filing attorney with permission
from Plaintiffs' counsel)

/s/ Catherine Agnoli

Gregory D. Phillips (4645)

Kevin A. Howard (4343)

HOWARD, PHILLIPS & ANDERSEN

560 East 200 South, Suite 300

Salt Lake City, Utah 84102

T: (801) 366-7471

Vasilios D. Dossas

NIRO, SCAVONE, HALLER & NIRO

181 West Madison, Suite 4600

Chicago, Illinois 60602

T: (312) 236-0733

F: (312) 236-0733

Attorneys for Plaintiffs

Phillip M. Adams and

Phillip M. Adams & Associates, L.L.C.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

ATLANTIC NATIONAL SERVICING CO.
LLC, a Maine limited liability company,

Plaintiff,

vs.

JON P. ANDERSON, PAULINE J.
ANDERSON, KEVIN BUTTARS,
DALLAS K. DALTON, BRYAN FELT,
BRUCE R. GUNNELL, KEVIN HANSEN,
LYNN V. HOBBS, RICHARD J. KOLSEN,
LUDEAN LARSEN, RANDY
POPPLETON, RICHARD QUINN, GARY
R. THUNNELL, STEVEN J. THUNELL,
and JOHN M. WHITE, individuals,

Defendants.

ORDER GRANTING
MOTION TO SET TIME FOR
RESPONSE TO DEFENDANTS'
MOTION TO DISMISS, OR
ALTERNATIVELY, FOR SUMMARY
JUDGMENT

Civil Case No. 1:06-CV-00002 PGC

Plaintiff Atlantic National Servicing Co., LLC ("Atlantic") has filed a Motion to Set the Time for Response to Defendants' September 27, 2006 Motion to Dismiss, or Alternatively, for Summary Judgment (#50) seeking the court to order that Atlantic's response to Defendants' Motion shall be due on October 27, 2006. Atlantic and Defendants have stipulated that Atlantic's response shall be due on October 27, 2006. The Court, having reviewed Atlantic's Motion and the parties Stipulation, and finding good cause therefore, GRANTS Atlantic's motion (#50) and orders that Atlantic's response to Defendants' Motion shall be due on October 27, 2006.

SO ORDERED.

Dated this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Honorable Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARVIN ELLIS,)	
)	
Petitioner,	)	Case No. 1:06-CV-110 DAK
)	
v.	)	District Judge Dale Kimball
)	
JUDGE BACHMAN,	)	O R D E R
)	
Respondent.)	

Petitioner/inmate, Marvin Ellis, submits a *pro se* civil case.¹ The filing fee is typically \$350.² However, Plaintiff asserted he was unable to prepay it. He thus applied to proceed without prepaying the filing fee and submitted a supporting affidavit.³ The Court granted Plaintiff *in forma pauperis* status.

Even so, Plaintiff must eventually pay the full \$350.00 fee required.⁴ A plaintiff must typically start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."⁵

¹See 42 U.S.C.S. § 1983 (2006).

²See 28 *id.* § 1914(a).

³See *id.* § 1915(a).

⁴See *id.* § 1915(b)(1).

⁵*Id.*

However, on his own, Plaintiff has recently submitted a \$150 payment, which suffices as an initial partial filing fee.

Still, Plaintiff must complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Plaintiff may proceed without prepaying his entire filing fee and on the basis of his self-initiated \$150 initial partial filing fee.

(2) Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.


(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 18th day of October, 2006.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Marvin Ellis, understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

Signature of Inmate
Marvin Ellis

LAWRENCE E. STEVENS (3103)
FRANCIS M. WIKSTROM (3462)
DAVID W. TUNDERMANN (3897)
SHANE D. HILLMAN (8194)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
Attorneys for US Magnesium, LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAGNESIUM CORPORATION OF
AMERICA, et al.,

Defendant.

**STIPULATION AND ORDER ENLARGING
TIME FOR DEFENDANT US MAGNESIUM
LLC'S REPLY IN SUPPORT OF MOTION TO
COMPEL**

Case No. 2:01CV0040 B

Judge Dee Benson

Magistrate Judge David Nuffer

Pursuant to Rules 6(b) and 26(c) of the Federal Rules of Civil Procedure, defendant US Magnesium LLC ("USM") and plaintiff United States of America hereby stipulate and agree that the Court should order that the time should be enlarged to permit USM to file its Reply in support of its pending motion to compel (which is presently due on Tuesday, October 17, 2006) on or before Thursday, October 19, 2006. The enlargement of time is necessary as counsel for USM suffered systemic computer failure on Thursday, October 12, 2006, continuing through Tuesday, October 17, 2006.

ORDER

Based upon the parties' Stipulation and GOOD CAUSE appearing therefor,

IT IS HEREBY ORDERED THAT:

USM shall have up to and including Thursday, October 19, 2006 in which to file its Reply in support of its pending motion to compel.

ENTERED this 18th day of October, 2006.

BY THE COURT:

s/ David Nuffer

Magistrate Judge David Nuffer
United States District Court Magistrate Judge

Stipulated and Approved to Form:

FOR US MAGNESIUM LLC

FOR THE UNITED STATES

s/ Shane D. Hillman

FRANCIS M. WIKSTROM
LAWRENCE E. STEVENS
DAVID W. TUNDERMANN
SHANE D. HILLMAN
PARSONS BEHLE & LATIMER

s/ Eric G. Williams

ERIC G. WILLIAMS, Trial Attorney, United
States Department of Justice, Environment and
Natural Resources Division, Environmental
Enforcement Section

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October 2006, I electronically filed the foregoing **STIPULATION AND ORDER ENLARGING TIME FOR DEFENDANT US MAGNESIUM LLC'S REPLY IN SUPPORT OF MOTION TO COMPEL**, a true and correct copy of the foregoing, with the Clerk of court using the CM/ECF system of the filing to the following:

- **Troy L. Booher (E-Filer)**
tbooher@swlaw.com; bjohnson@swlaw.com; mbrown@swlaw.com
- **Tom D. Branch (E-Filer)**
tdbranch@qwest.net; branchlaw@qwest.net
- **Bernice I. Corman (E-Filer)**
bicky.corman@usdoj.gov
- **Susan J. Eckert (E-Filer)**
susaneckert.sellc@comcast.net
- **Mark C. Elmer (E-Filer)**
mark.elmer@usdoj.gov; corrine.christen@usdoj.gov
- **Eric A. Overby (E-Filer)**
Eric.Overby@usdoj.gov
- **Arthur F Sandack (E-Filer)**
asandack@msn.com
- **Joseph M. Santarella, Jr (E-Filer)**
jmsantarella.sellc@comcast.net; susaneckert.sellc@comcast.net
- **Alan L. Sullivan (E-Filer)**
asullivan@swlaw.com; mbrown@swlaw.com; ksblack@swlaw.com
- **Mitzi L. Torri (E-Filer)**
mtorri@beusgilbert.com
- **Michael D. Zimmerman (E-Filer)**
mzimmerman@swlaw.com; mbrown@swlaw.com; ksblack@swlaw.com
- **Michael Gordon (E-Filer)**
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- **Peter Raack (E-Filer)**
raackk.pete@epa.gov
- **Andrew Lensink**
lensink.andy@epa.gov
- **Leo Beus**
lbeus@beusgilbert.com

/s/ Shane D. Hillman _____

United States District Court District of Utah

FILED
U.S. DISTRICT COURT

2005 OCT 19 A 10:19

UNITED STATES OF AMERICA

vs.

Luis Alfonso Herrera-Castellanos

aka Luis Alfonso Herrera

aka "Perico" (Parrot)

(For Revocation of Probation or Supervised Release)

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:02-CR-00259-001-TC**

Plaintiff Attorney: **Lynda Rolston Krause**

Defendant Attorney: **Kris Angelos**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: **None**

Defendant's Date of Birth: **1979**

10/12/2006

Date of Imposition of Sentence

Defendant's USM No.: **09499-081**

Defendant's Residence Address:

Defendant's Mailing Address:

Country

Country

THE DEFENDANT:

☒ admitted to allegation(s)

1 of the Petition

☐ pleaded nolo contendere to allegation(s)
which was accepted by the court.

☐ was found guilty as to allegation(s)

COP _____ Verdict _____

Violation Number

Nature of Violation

Date Violation Occurred

1.

The dft illegally reentered the United States and was found in the country on or about 8/2/2003.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **8 Months - Sentence to run consecutive to Sentence imposed in Case No. 2:06CR00523 TC.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of _____.

☐ The defendant is placed on Probation for a period of _____.
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

☐ forthwith.

☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

No fine imposed.

☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ _____ \$ _____

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ _____, payable as follows:

☐ forthwith.

☒ The Court reinstates the remaining balance of the original imposed SAF

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at the facility located in California City, California, or as near to San Diego, California, as possible.

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

10 18 2006

Tena Campbell
Tena Campbell
United States District Judge

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
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CRAVATH, SWAINE & MOORE LLP
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Telephone: (212) 474-1000
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*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

ORDER RE EXTENSION OF
DEADLINES

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Based upon the stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED that the parties shall have an extension of time as follows:

Both parties' memoranda in opposition to the pending motions for summary judgment shall be due no later than November 1, 2006;

IBM's memorandum in opposition to SCO's motion for relief re spoliation shall be due no later than November 1, 2006;

Both parties' reply memoranda in support of the pending motions for summary judgment shall be due no later than December 8, 2006;

SCO's reply memorandum in support of its motion for relief re spoliation shall be due no later than November 24, 2006; and

Both parties' responses to all outstanding requests for admission shall be due no later than November 8, 2006.

The parties will not seek any further extensions of the deadline for memoranda in opposition to the pending summary judgment motions.

DATED this 19th day of October, 2006.

BY THE COURT



APPROVED AS TO FORM:

HATCH, JAMES & DODGE, P.C.

Brent O. Hatch

Mark F. James

BOIES, SCHILLER & FLEXNER LLP

Edward Normand

/s/ Edward Normand
Counsel for Plaintiff
(e-filed with authorization from counsel)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,</p> <p style="text-align:right">Plaintiff,</p> <p>ANDREA LIENDER,</p> <p style="text-align:right">Plaintiff-Intervenor,</p> <p style="text-align:center">vs.</p> <p>BODY FIRM AEROBICS, INC., d/b/a GOLD'S GYM,</p> <p style="text-align:right">Defendant.</p>	<p style="text-align:center">ORDER</p> <p style="text-align:center">Case No. 2:03 CV 846 TC</p>
--	---

This matter is before the court on Plaintiffs' Motion to Set Aside the Memorandum Decision and Order Entered on July 13, 2006. On July 13, 2006, the court granted Defendant Body Firm Aerobics, Inc.'s motion for summary judgment on Plaintiff Andrea Liender's retaliation claim. Plaintiffs now assert that newly discovered evidence undermines the court's previous ruling. Specifically, Plaintiffs argue that after resuming the deposition of Ronald Littlebrant, they discovered additional information regarding Mr. Littlebrant's motivation to circulate an interoffice memorandum that essentially chastised Ms. Liender for her job performance.

The court previously considered the interoffice memorandum in question, and Plaintiffs have not offered any evidence that materially alters the court's earlier assessment of that memorandum or its effect on Ms. Liender's retaliation claim. As Plaintiffs readily admit, the

newly discovered evidence does not shockingly alter the factual context of Ms. Liender's retaliation claim. (See Memo. in Supp. of Mot. to Set Aside Memo. Decision and Order 3 (dkt. #294-1) ("[T]he newly discovered evidence do not []rise to overtly dispositive statements . . .").) The evidence that Plaintiffs now rely upon, at best, indicates that the complaints lodged by Mr. Littlebrant in the interoffice memorandum were groundless, which, Plaintiffs argue, indicates that Mr. Littlebrant circulated the memorandum for wholly retaliatory purposes.

Even if Plaintiffs are correct, the new information does not undermine the conclusion that Ms. Liender's retaliation claim lacks merit. There is no doubt that the interoffice memorandum contained a harsh, and perhaps unjustified, attack on Ms. Liender's job performance. But when the interoffice memorandum is considered in context, it is apparent that Ms. Liender did not suffer a materially adverse action that unduly inhibited her ability to utilize Title VII's remedial mechanisms.

Accordingly, Plaintiffs' Motion to Set Aside the Memorandum Decision and Order Entered on July 13, 2006 is DENIED.

SO ORDERED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2005 OCT 19 P 1:30

JAMES W. BURBANK,

Plaintiff,

vs.

CASE NO. 2:04-CV-742 JEC/RLP

UNITED STATES DISTRICT
COURT OF UTAH, all Judges, et al.,

Defendants.

**ORDER DENYING DEFENDANT WAMPANOAG
NATION, TRIBE OF GRAYHEAD, WOLF BAND'S
MOTION TO QUASH ATTEMPTED SERVICE OF PROCESS**

THIS MATTER having come before the court on the Defendant Wampanoag Nation, Tribe of Grayhead, Wolf Band's Motion to Quash Attempted Service of Process (Docket No. 116), the court having read the motion, the memoranda in support of and in opposition to the motion and otherwise being fully advised, finds that the motion is not well taken and will be **DENIED**.

IT IS THEREFORE ORDERED that the Defendant Wampanoag Nation, Tribe of Grayhead, Wolf Band's Motion to Quash Attempted Service of Process is **DENIED**.

IT IS SO ORDERED.



RICHARD L. PUGLISI
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2007 OCT 19 P 1:30

JAMES W. BURBANK,

Plaintiff,

vs.

CASE NO. 2:04-CV-742 JEC/RLP

UNITED STATES DISTRICT
COURT OF UTAH, all Judges, et al.,

Defendants.

**ORDER GRANTING VERIFIED MOTION TO
COMPEL AND FOR SANCTIONS RE: CURTIS RICHMOND**

THIS MATTER having come before the court on the Verified Motion to Compel and for Sanctions Re: Curtis Richmond (Docket No. 107), the court having reviewed the motion and supporting papers and noting no opposition to the motion, finds that the motion is well taken and will be **GRANTED**.

On August 11, 2005, Uintah County Defendants served Curtis Richmond interrogatories and document requests. Mr. Richmond never responded to this discovery. Further, on August 28, 2005, Mr. Richmond's deposition was noticed. Mr. Richmond did not appear for his deposition. As a result of his failure to appear, the defendants attorney incurred expenses, costs and attorney fee charges relating to this wasted endeavor. Mr. Richmond has not responded to this motion, and, therefore, these factual assertions are unopposed. Further, the court finds that the request for expenses by the Uintah County Defendants is fair and reasonable.

IT IS THEREFORE ORDERED that the Verified Motion to Compel and for Sanctions Re: Curtis Richmond is **GRANTED**.

IT IS FURTHER ORDERED that the Uintah County Defendants are awarded the amount of \$2,915.70.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written over a horizontal line.

RICHARD L. PUGLISI
United States Magistrate Judge

ROBERT BREEZE #4278
Attorney for Defendant
402 East 900 South #1
Salt Lake City, Utah 84111
Telephone: (801) 322-2138
Facsimile: (801) 328-2554
E-mail: rbreeze@lgcy.com

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

OCT 19 2006

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH,

CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 2:05 CR 00349 DB
)	
Plaintiff,	)	ORDER ON DEFENDANT'S
	)	MOTION FOR ORDER
v.	)	EXTENDING SURRENDER DATE
)	
TRISHA DAWN CARTER)	
)	
Defendant.)	
	)	Honorable Dee Benson

BASED UPON the motion of defendant and good cause appearing therefore it is hereby ordered that the self surrender date for defendant Trisha Dawn Carter shall be and is extended until the 17 day of November, 2006 at 3:00 o'clock p.m.

DATED this 19th day of October, 2006.



Honorable Dee Benson

FILED**UNITED STATES DISTRICT COURT****OCT - 5 2006****CENTRAL****DISTRICT OF****ROBERT L. BRAITHWAITE**
U.S. MAGISTRATE**UNITED STATES OF AMERICA****v.****JEFFREY M. BRADLEY****ORDER OF PROBATION**
UNDER 18 U.S.C. § 3607**CASE NUMBER: 05-CR-399**

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

3/ \$200 witness fee.

Date:

10-5-06



Signature of Judicial Officer

Robert L. Braithwaite, U.S. Magistrate
Name and Title of Judicial Officer**CONSENT OF THE DEFENDANT**

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

(Signature of Defendant)

1924 S. 1000 E. #2

(Street Address)

Salt Lake City, UT 84105

(City, State, Zip)

(801) 577-6322

(Telephone Number of Defendant)

(Signature of Defense Counsel)

10-5-06

(Date of Signing)

(Birthdate of Defendant)


CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 9-29-06

by


Signature of Defendant

DATED: _____

by: _____

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Ramon Camarena Cortez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:05CR000467-001

USM Number: 84349-0008

Solomon J. Chacon

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) II-Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21USC§841(a)(1)	Distribution of 50 grams or more of Methamphetamine		II

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) I, III and IV ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/16/2006

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

10/18/2006

Date

DEFENDANT: Ramon Camarena Cortez
CASE NUMBER: DUTX 2:05CR000467-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

90 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends a Federal Correctional Institution at La Tuna in Anthony, Texas, for family visitations.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Ramon Camarena Cortez
CASE NUMBER: DUTX 2:05CR000467-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Ramon Camarena Cortez
CASE NUMBER: DUTX 2:05CR000467-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.

DEFENDANT: Ramon Camarena Cortez
CASE NUMBER: DUTX 2:05CR000467-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Ramon Camarena Cortez
CASE NUMBER: DUTX 2:05CR000467-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

BRETT L. TOLMAN, United States Attorney (#8821)
CARLIE CHRISTENSEN, Assistant United States Attorney (#0633)
Office of the United States Attorney
185 South State Street, Suite #400
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

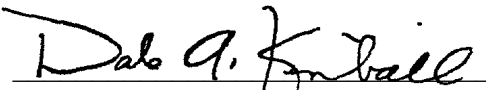
IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

BEVERLY AND ORVALL MYRICK,	:	Civil No. 2:05 CV 246 DAK
Plaintiff,	:	
vs.	:	ORDER OF DISMISSAL
UNITED STATES OF AMERICA,	:	
Defendant.	:	Hon. Dale A. Kimball

Based upon the Stipulation of the parties and good cause appearing therefor, IT IS
HEREBY ORDERED that Plaintiffs' claims against the United States are dismissed with
prejudice and on the merits.

DATED this 18th day of October, 2006.

BY THE COURT:


HON. DALE A. KIMBALL
United States District Judge

DAVID W. SLAUGHTER (2977)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiff
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE AMERICAN INSURANCE
COMPANY, a corporation,

Plaintiff,

vs.

FOX CONSTRUCTION, INC., et al.,

Defendants.

ORDER OF DISMISSAL

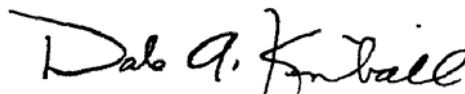
Case No. 2:05-CV-01032

Honorable Dale A. Kimball

Upon stipulation and joint motion of the parties and for good cause shown, it is hereby
ORDERED, ADJUDGED AND DECREED that the captioned action and all claims therein be
and hereby is dismissed, with prejudice. Each party shall bear its own costs and fees.

DATED this 18th day of October, 2006.

BY THE COURT:



Dale A. Kimball
United States District Judge

FILED

OCT 16 2006

United States District Court
District of Utah

ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Kristina A. Proietti

Case Number: 2:06-cr-0126-001

Plaintiff Attorney: Paul Graf

Defendant Attorney: Ryan Stout appearing for Doug Terry

Date of Imposition: October 5, 2006

☒ pleaded guilty to count(s)

Count I

☐
☐

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

Title & Section

21 USC 844

Nature of Offense

Possession of a controlled substance

Count
Number(s)

I

☐ The defendant has been found not guilty on count(s) count

☒ Count(s) Count II (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

Upon release from confinement, the defendant shall be placed on supervised release for a term of

The defendant is placed on Probation for a term of 12 months supervised.

The defendant shall not commit another federal, state or local crime.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

Defendant: Kristina A. Proietti
Case Number: 2:06-cr-0126

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release/probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).
The defendant shall also comply with the additional conditions in this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE/PROBATION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: Kristina A. Proietti
Case Number: 2:06-cr-0126

SPECIAL CONDITIONS OF SUPERVISED RELEASE / PROBATION

In addition to all Standard Conditions of Supervised Release or Probation set forth above, the following Special Conditions are imposed:

1. The Defendant shall not use or possess illegal drugs.
2. The Defendant shall submit to drug/alcohol testing, as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If deemed appropriate by the Court and the probation office, the defendant will pay additional costs associated with confirmation and testing of positive results reported to the Court.
3. The Defendant shall submit to the search of his/her person, residence, office or vehicle under his/her control, by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.
4. The Court dismisses Count II, but the government reserves the right to re-file if the defendant is found in violation of probation.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ 1000.00, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
as directed by the probation department

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

Defendant: Kristina A. Proietti
Case Number: 2:06-cr-0126

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Totals: \$ _____ \$ _____		

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: _____

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

☐ forthwith.

☒ as directed by the probation department

PRESENTENCE REPORT / OBJECTIONS

☐ The court adopts the factual findings and guideline application in the presentence report.

☐ The court adopts the factual findings and guideline application in the presentence report, except as set forth below:

Guideline Range Determined by the Court:

Total Offense Level: _____

Criminal History Category: _____

Imprisonment Range: _____ to _____ months

Supervised Release Range: _____ to _____ years

Fine Range: _____ to _____

RECOMMENDATION

Defendant: Kristina A. Proietti
Case Number: 2:06-cr-0126

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
-

CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the Washington County Correctional Facility at Purgatory at _____ on _____.
- ☐ The defendant shall report to the _____ institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE:

10-16-06



Robert T. Braithwaite
United States Magistrate Judge

STIPULATION AND ORDER TO CONTINUE DEADLINE FOR FILING OF PRE-TRIAL MOTIONS

FILED
U.S. DISTRICT COURT
2006 OCT 19 A 9:36

Counsel Submitting and Utah State Bar Number Gerald B. Netzky- #7949
Attorney for Defendant
Address 720 S. Seventh Street, Third Floor
Telephone 702-385-9595

CLERK OF DISTRICT COURT
DISTRICT OF UTAH
SALT LAKE CITY, UTAH

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA	*	Case Number 2:06 CR 00149 DB
vs.	*	STIPULATION TO CONTINUE
JESSICA ROBINSON	*	DEADLINE
	*	FOR FILING OF PRE-TRIAL
	*	MOTIONS

IT IS HEREBY STIPULATED by and between Jessica Robinson, by and through her counsel, GERALD NETZY, ESQ. and ERICK M. FERRAN, ESQ., and the law firm of PATTI & SGRO, LTD., and the United States of America, by and through STEPHEN J. SORENSON, acting United States Attorney and J. ERIC BUNDERSON, Special Assistant United States Attorney, that the October 16, 2006, date for Defendant to file any Pre-Trial motions is to be extended two (2) days, through October 18, 2006.

This stipulation is entered into based on the following:

1. Defense counsel has a heavy trial calendar and has been unable to determine by October 16, 2006, if any pre-trial motions are appropriate;
2. Defendant requires additional time to both make this determination and discuss them with his client;

3. Counsel for the Defendant has spoken to Assistant United States Attorney Eric Bunderson, and Mr. Bunderson has no objection to this continuance.

DATED this 16th day of October, 2006.

/s/ Gerald Netzky

Gerald Netzky, Esq.
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101
Attorney for Jessica Robinson

/s/ J. Eric Bunderson

J. Eric Bunderson
Special Assistant United States Attorney
185 South State Street #400
Salt Lake City, Utah
Attorneys for the United States of America

IT IS SO ORDERED:

Dated: October 17, 2006



UNITED STATES DISTRICT JUDGE

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Robert F. Noonan**

Docket Number: **2:06-CR-00329-001-RTB**

Name of Sentencing Judicial Officer: **Honorable Robert T. Braithwaite**
United States Magistrate Judge

Date of Original Sentence: **June 6, 2006**

Original Offense: **Possession of a Controlled Substance - Marijuana**

Original Sentence: **12 months probation; \$1,000 fine**

Type of Supervision: **Probation** Supervision Began: **June 6, 2006**

FILED

OCT - 5 2006

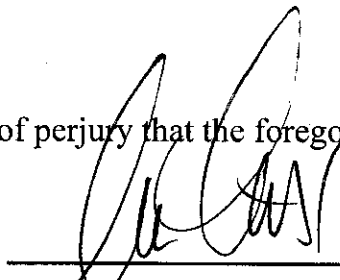
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

SUPERVISION SUMMARY

The defendant is requesting travel to South America to participate in his employment as a wilderness travel guide. On June 6, 2006, the defendant entered a plea of guilt under 18 U.S.C. § 3607. During his court appearance, he inquired of the Court if he could leave the country in order to work in Argentina and Chili during the winter of 2006-07. Your Honor indicated from the bench that if the defendant was in compliance with the terms and conditions of probation, that travel would be allowed. Contact with the District of Arizona, where the defendant resides, reveals the defendant is in compliance with his probation order. The probation office is supporting the defendants request. Therefore, it is respectfully recommended the Court allow the defendant travel outside the United States from December 18, 2006 to February 10, 2007.


If the Court desires more information or another course of action, please contact me at (435) 634-0660 ext. 25.

I declare under penalty of perjury that the foregoing is true and correct.


Coby Leavitt
U.S. Probation Officer
Date: October 5, 2006

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other


Honorable Robert T. Braithwaite
United States Magistrate Judge

Date: 10-5-06

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Trevor Lyn Miller

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:06CR000336-001

USM Number: 13609-081

Tiffany Johnson

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Misdemeanor Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 641	Theft of Government Property		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1-2 of the Indictment ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/11/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Judge

Title of Judge

10
Date

18

2006

DEFENDANT: Trevor Lyn Miller
CASE NUMBER: DUTX 2:06CR000336-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TIME SERVED

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Trevor Lyn Miller
CASE NUMBER: DUTX 2:06CR000336-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Trevor Lyn Miller

CASE NUMBER: DUTX 2:06CR000336-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to a drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
2. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office.
3. The defendant shall obtain his GED or high school diploma, and provide proof to the probation office.

DEFENDANT: Trevor Lyn Miller

CASE NUMBER: DUTX 2:06CR000336-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 25.00	\$	\$ 884.17

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
U.S. Geological Survey	\$729.35	\$729.35	
c/o Donna Gallup			
2329 West Orton Circle			
Salt Lake City, UT 84119			
Capitol Industries INC	\$154.82	\$154.82	
c/o Jack Eichers			
2880 South Main Street, Suite 100			
Salt Lake City, UT 84115			

TOTALS	\$ <u>884.17</u>	\$ <u>884.17</u>
--------	------------------	------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Trevor Lyn Miller
CASE NUMBER: DUTX 2:06CR000336-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 25.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 75.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Restitution shall be payable at a minimum rate of \$75.00 per month or as otherwise directed by the USPO. If not paid in full before the 15th day after the date of this judgment, interest will accrue.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Restitution of \$884.17, shall be paid jointly and severally with co-defendant Beningo Lopez, Case No. 2:06CR000336-002 TC.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central

District of

Utah 2006 OCT 19 A 10:13

UNITED STATES OF AMERICA

V.

Benigno Lopez

JUDGMENT IN A CRIMINAL CASE DISTRICT OF UTAH

Case Number: DUTX 2:06CR000336-002

USM Number: 13624-081

Ed Wall

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Misdemeanor Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 641	Theft of Government Property		1s

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/17/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Judge

Title of Judge

10-18-2006

Date

DEFENDANT: Benigno Lopez
CASE NUMBER: DUTX 2:06CR000336-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TIME SERVED

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Benigno Lopez
CASE NUMBER: DUTX 2:06CR000336-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Benigno Lopez
CASE NUMBER: DUTX 2:06CR000336-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
2. The defendant shall maintain full-time, verifiable employment, be actively seeking employment, or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
3. The defendant shall reside with is sister.
4. The defendant shall not associate with known felons.

DEFENDANT: Benigno Lopez
CASE NUMBER: DUTX 2:06CR000336-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 25.00	\$	\$ 884.17

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
U.S. Geological Survey c/o Donna Gallup 2329 West Orton Circle Salt Lake City, UT 84119	\$729.35	\$729.35	
Capitol Industries INC c/o Jack Eichers 2880 South Main Street, Suite 100 Salt Lake City, UT 84115	\$154.82	\$154.82	

TOTALS	\$ <u>884.17</u>	\$ <u>884.17</u>
--------	------------------	------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Benigno Lopez
CASE NUMBER: DUTX 2:06CR000336-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 25.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 75.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Restitution shall be paid at a minimum rate of \$75.00 per month or as otherwise directed by the USPO.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The Court orders Restitution of \$884.17, which shall be paid jointly and severally with co-dft Trevor Lyn Miller, Case No. 2:06CR000336-001 TC.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

OSCAR MORENO-VILLA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 206CR000422 - 001

USM Number: 13698-081

Joshua Bowland

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/17/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

10/18/2006

Date

DEFENDANT: OSCAR MORENO-VILLA
CASE NUMBER: DUTX 206CR000422 - 001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

33 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Incarceration in California City, CA

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: OSCAR MORENO-VILLA
CASE NUMBER: DUTX 206CR000422 - 001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: OSCAR MORENO-VILLA
CASE NUMBER: DUTX 206CR000422 ~ 001

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: OSCAR MORENO-VILLA
CASE NUMBER: DUTX 206CR000422 - 001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: OSCAR MORENO-VILLA
CASE NUMBER: DUTX 206CR000422 - 001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED

OCT 10 2006

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF UTAH
CENTRAL DIVISION
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

Andrew J. Becker

Defendant.

ORDER OF DISMISSAL

Case # 2:06-cr-00431

Magistrate Judge Robert T. Braithwaite

Having heard the evidence at trial, the court finds that the defendant has not been proven guilty beyond a reasonable doubt. The court therefore finds the defendant not guilty as charged and orders the case dismissed, with prejudice.

DATED this 10 day of October 2006.

BY THE COURT:



ROBERT T. BRAITHWAITE
United States Magistrate Judge

STEVEN B. KILLPACK, Federal Defender (#1808)
WENDY M. LEWIS, Assistant Federal Defender (#5993)
Utah Federal Defender Office
46 West 300 South, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,	:	AMENDED ORDER FOR
	:	A COMPETENCY HEARING
Plaintiff,	:	AND PSYCHOLOGICAL
-vs-	:	AND/OR PSYCHIATRIC
	:	EVALUATION PURSUANT TO
JAMES SPANN,	:	18 U.S.C. § §4241(a) and 4242(a)
Defendant.	:	Case No. 2:06CR-445DAK

Based on motion of the defendant, agreement between the parties and good cause shown:

It is hereby ORDERED that defendant's motion for a competency hearing and a psychological/and or psychiatric evaluation and report, pursuant to U.S.C. §§4241(a) and 4242(a), is granted.

It is further ORDERED that defendant is hereby committed to the custody of the Attorney General for transportation by the United States Marshal to a suitable federal facility for a psychiatric and/or psychological examination in accordance with 18 U.S.C. §§ 4241(a) and 4242(a). This Court strongly recommends that the Attorney General hospitalize the defendant at the FMC, Butner, North Carolina.

It is further ORDERED that the examiner shall prepare a written report with this Court based on: 1) a psychological and/or psychiatric evaluation of defendant, pursuant to 18 U.S.C. §4241(a), to determine whether the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences

of the proceedings against him and to assist properly in his defense; and 2) a psychological and/or psychiatric evaluation of the defendant, pursuant to 18 U.S.C. §4242(a), to determine whether the defendant was insane, pursuant to Fed.R.Crim.Pro. 12.2(a), at the time of the conduct which gave rise to the allegations as indicted in the above-entitled case. Copies of said reports shall be provided to the following:

Wendy M. Lewis
Attorney for James Spann
46 West Broadway, #110
Salt Lake City, Utah 84101
Telephone: 801-524-4010
Facsimile: 801-524-4060

Karin Fojtik
Assistant United States Attorney
185 South State Street, #400
Salt Lake City, Utah 84111-1506
Telephone: 801-524-5682
Facsimile: 801-524-6924

Additionally, all resulting reports should be filed with the Court pursuant to the provisions of 18 U.S.C. §4247(b) and (c).

It is further ORDERED that upon completion of said report, defendant shall be transported back to the District of Utah forthwith, for a competency hearing.

It is further ORDERED that the trial scheduled for October 31, 2006, is stricken, and that the time between time between October 31, 2006, and defendant's competency hearing, be excluded from speedy trial computation. Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served, outweigh the best interests of the public and the defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

DATED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

HONORABLE DALE A. KIMBALL
United States District Court Judge

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Luis Alfonso Herrera-Castellanos

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:06CR00523-001 A 10: 18

USM Number: 09499-081

Kris Angelos

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/12/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Judge

Title of Judge

10 18 2006

Date

DEFENDANT: Luis Alfonso Herrera-Castellanos
CASE NUMBER: DUTX 2:06CR000523-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

10 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at the facility located in California City, California, or as near to San Diego, California, as possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Luis Alfonso Herrera-Castellanos
CASE NUMBER: DUTX 2:06CR000523-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Luis Alfonso Herrera-Castellanos

CASE NUMBER: DUTX 2:06CR000523-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Luis Alfonso Herrera-Castellanos

CASE NUMBER: DUTX 2:06CR000523-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Luis Alfonso Herrera-Castellanos
CASE NUMBER: DUTX 2:06CR000523-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

CLERK, U.S. DISTRICT COURT
October 19, 2006 (10:40am)
DISTRICT OF UTAH

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA
V.ORDER SETTING
CONDITIONS OF RELEASE

HARVEY RITTER

Case Number: 2:06-CR-640 DS

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$)

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

(✓)(7) The defendant shall:

- () (a) maintain or actively seek employment.
- () (b) maintain or commence an educational program.
- (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:
maintain residence at the address reported to PTS. No change without prior permission of PTS.
- () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- (✓)(e) report on a regular basis to the supervising officer as directed.
- () (f) comply with the following curfew:
- (✓)(g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- () (h) refrain from any use of alcohol.
- () (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
- () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- () (m) execute a bail bond with solvent sureties in the amount of \$
- () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
- () (o) surrender any passport to Clerk of Court.
- () (p) obtain no passport
- () (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
- () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- () (s) submit to an electronic monitoring program as directed by the supervising officer.
- (✓)(t) no travel outside the State of Wyoming without prior permission of PTS, with the exception of traveling for employment and/or to State of Utah for court-purposes only.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

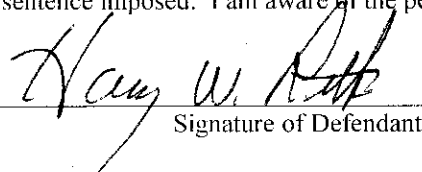
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

Address

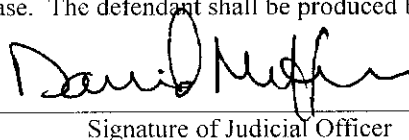
City and State

Telephone

Directions to the United States Marshal

- (☒) The defendant is ORDERED released after processing.
- (☐) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: October 19, 2006


Signature of Judicial Officer

Magistrate Judge David Nuffer

Name and Title of Judicial Officer

BRETT L. TOLMAN, United States Attorney (#8821)
PAUL F. GRAF, Special Assistant United States Attorney (#1229)
Attorneys for the United States of America
192 East 200 North, Suite 200
St. George, Utah 84770
Telephone: (435) 634-2480

FILED

OCT - 5 2006

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF UTAH, CENTRAL DIVISION
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA, : 2:06-CR- *660*
Plaintiff, :
vs. : MOTION FOR LEAVE TO
DISMISS, ORDER GRANTING
DISMISSAL
JOHN STEADMAN, :
Defendant. : Magistrate Robert T. Braithwaite

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States Attorney for the District of Utah hereby moves for leave to dismiss the Misdemeanor Information against JOHN STEADMAN for the reason that: the government does not wish to proceed at this time.

Subject to the Court granting the Government's Motion For Leave To Dismiss and pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the Misdemeanor Information pending against the defendant is hereby dismissed without prejudice.

DATED this *3rd* day of October, 2006.

BRETT L. TOLMAN
United States Attorney

Paul F. Graf
Special Assistant US Attorney

ORDER GRANTING LEAVE TO DISMISS

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the dismissal without prejudice of the Misdemeanor Information against the defendant.

DATED this *5* day of *October*, 2006.

BY THE COURT:


United States Magistrate

FILED

OCT 10 2006

UNITED STATES DISTRICT COURT

ROBERT T. BRAITHWAITE
U.S. MAGISTRATE
UTAH

CENTRAL

DISTRICT OF

UNITED STATES OF AMERICA

v.

CHRIS T. HARPER

**ORDER OF PROBATION
UNDER 18 U.S.C. § 3607**

CASE NUMBER: 2:06-CR-698

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date: 10-10-06



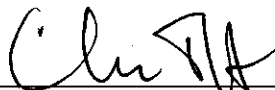
Signature of Judicial Officer

Robert T. Braithwaite, U.S. Magistrate
Name and Title of Judicial Officer

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.



(Signature of Defendant)

(Street Address)

(City, State, Zip)

(Telephone Number of Defendant)

3715 Daisy Field

No Las Vegas NV 89032

702-631-7797

(Signature of Defense Counsel)

(Date of Signing)

CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle by a U.S. probation officer in a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 10/10/06 by:

Signature of Defendant

DATED: _____

by:

Signature of Defense Counsel

(If any)

FILED

OCT 10 2006

United States District Court
District of Utah

ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Chris T. Harper

Case Number: **2:06-cr-0698-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Pro Se**

Date of Imposition: October 5, 2006

DEFENDANT:

☒

pleaded guilty to count(s)

Count II

Title & Section

43 CFR 9212.1(h)

Nature of Offense

Violate Fire Prevention order

Count
Number(s)
II

☒ Count(s) Count I-3607 and Count III- Dismissed (is)(are) dismissed on the motion of the United States.

Probation to run concurrent with the Order of Probation as to the 3607.

CRIMINAL MONETARY PENALTIES

TOTAL FINE: Count I: \$ 150.00

ASSESSMENT: Count I: \$ 25.00

10-10-06
Date

Robert T. Braithwaite
Robert T. Braithwaite, United States Magistrate Judge
Name and Title of Judicial Officer

UNITED STATES DISTRICT COURT

FILED

OCT - 5 2006

CENTRAL

DISTRICT OF

UTAH
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

ORDER OF PROBATION UNDER 18 U.S.C. § 3607

v.

RAINE C. JOHNSON

CASE NUMBER: 2:06-CR- 699

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date: 10-5-06

[Signature]

Signature of Judicial Officer

[Signature]

Robert T. Braithwaite, U.S. Magistrate

Name and Title of Judicial Officer

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

[Signature]

(Signature of Defendant)

(Signature of Defense Counsel)

(Street Address)

(Date of Signing)


(City, State, Zip)

(Telephone Number of Defendant)

CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 10-5-06 by 
Signature of Defendant

DATED: _____ by: _____

UNITED STATES DISTRICT COURT

FILED

OCT - 5 2006

CENTRAL

DISTRICT OF

UTAH
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

ORDER OF PROBATION UNDER 18 U.S.C. § 3607

v.

RAINE C. JOHNSON

CASE NUMBER: 2:06-CR- 699

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

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Date: 10-5-06

[Signature]

Signature of Judicial Officer

[Signature]

Robert T. Braithwaite, U.S. Magistrate

Name and Title of Judicial Officer

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

[Signature]
(Signature of Defendant)

(Signature of Defense Counsel)

(Street Address)

(Date of Signing)


(City, State, Zip)

(Telephone Number of Defendant)

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- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
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- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
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- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 10-5-06 by 
Signature of Defendant

DATED: _____ by: _____

UNITED STATES DISTRICT COURT

FILED

OCT - 5 2006

CENTRAL

DISTRICT OF

UTAH
ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

v.

DARICK J. McAFEE

**ORDER OF PROBATION
UNDER 18 U.S.C. § 3607**

CASE NUMBER: 2:06-CR- 700

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

IT IS ORDERED that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
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Date:

10-5-06

Signature of Judicial Officer

Robert T. Braithwaite, U.S. Magistrate

Name and Title of Judicial Officer

CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

(Signature of Defendant)

(Street Address)

(City, State, Zip)

(Telephone Number of Defendant)

(Signature of Defense Counsel)

(Date of Signing)

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- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 10/5/06

by 
Signature of Defendant

DATED: _____

by: _____

FILED

OCT 10 2006

United States District Court
District of Utah

ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Shylain C. Harper

Case Number: 2:06-cr-00701-001

Plaintiff Attorney: Paul Graf

Defendant Attorney: Pro Se

Date of Imposition: October 5, 2006

DEFENDANT:

☒

pleaded guilty to count(s)

Count I, II, III and V

Title & Section	Nature of Offense	Count Number(s)
43 CFR 8365.1-4(a)(4)	Resist issuance of a citation	I
43 CFR 8365.1-4(a)(4)	Interfere with a BLM employee	II
43 CFR 8365.1-4(a)(4)	Interfere with a BLM employee	III
43CFR 8365.1-4(a)(2)	Create a hazard	V

☒ Count(s) Count IV (is)(are) dismissed on the motion of the United States.

The Defendant is placed on bench probation for a period of 8 months. The Defendant shall pay fine and fees in full on or before the expiration of the probation period.

CRIMINAL MONETARY PENALTIES

TOTAL FINE: Count I:	\$ 100.00	ASSESSMENT: Count I:	\$ 25.00
Count II:	\$ 100.00	Count II:	\$ 25.00
Count III:	\$ 100.00	Count III:	\$ 25.00
Count V:	\$ 200.00	Count V:	\$ 25.00

Due by May 7, 2007

Date

10-10-06

Robert T. Braithwaite, United States Magistrate Judge
Name and Title of Judicial Officer

**United States District Court
for the District of Utah**

Criminal Pretrial Instructions

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THEODORE L. HANSEN; INTERSTATE
ENERGY CORP.; AND TRIPLE M, L.L.C.,

Plaintiffs,

vs.

NATIVE AMERICAN REFINERY CO. aka
NATIVE AMERICAN REFINERY
COMPANY, INC.; PT. BANK NEGARA
INDONESIA (PERSERO) TBK; EKO
BUDIWIYONO; DRS. FIRMANSYAH;
GATOT SISMOYO; RACHMAT
WIRIATMAJA; YOPIE LAMONGE; MAX
NIODE; LILLES HANDAYANI; UTTI
KARIAYAM; MUBARIK ASDJATIMUDA;
STEVE O.Z. FINKEL-MINKIN aka STEVE
FINKEL; ROBERT MCKEE; FRED
NEWCOMB; NEWCOMB & CO.; AND
DOES 1-20,

Defendants.

ORDER DENYING FREDERICK
NEWCOMB AND NEWCOMB &
CO.'S MOTION TO DISMISS FOR
LACK OF JURISDICTION

Case No. 2:06-CV-00109 PGC

In their pending motion to dismiss for lack of personal jurisdiction, defendants Frederick W. Newcomb and Newcomb & Company (the "Newcomb defendants") argue they lack sufficient contacts with the state of Utah for this court to exercise personal jurisdiction. However, the

plaintiffs have made a prima facie showing of personal jurisdiction over the Newcomb defendants in connection with their allegations of RICO¹ violations. Because the remainder of the plaintiffs' claims against the Newcomb defendants arise out of the same nucleus of operative fact, the court asserts pendent personal jurisdiction over the defendants with regard to these claims as well. The court finds a hearing on this matter to be unnecessary.

BACKGROUND

Broadly, this case involves allegations the defendants conspired to defraud the plaintiffs of millions of dollars. Allegedly, a number of the defendants entered into a business deal wherein they promised to pay agreed-upon sums of money in exchange for certain assets and interest in various business owned by the plaintiffs. According to the plaintiffs, although the plaintiffs performed their part of the bargain, the defendants did not.

The plaintiffs' original complaint did not include the Newcomb defendants. However, the plaintiffs filed an amended complaint on June 23, 2006, naming Mr. Newcomb and Newcomb & Co. as defendants. Eight of the sixteen separate charges in the complaint purport to apply to the Newcomb defendants – specifically, the charges of fraudulent inducement, civil conspiracy, aider and abettor liability under both federal and state law, RICO violations, quasi contract/unjust enrichment, conversion, and breach of covenant of good faith and fair dealing. Allegedly, Mr. Newcomb “used his position and expertise as an investment banker (1) to convince Plaintiffs that a proposed purchase of Plaintiffs' assets was legitimate and fully secured

¹Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*

by genuine bank guarantees, and (2) to help facilitate the ultimate fraud against Plaintiffs.”²

In particular, the plaintiffs allege Mr. Newcomb verified the validity of bond guarantees and represented to the plaintiffs they would be able to collect from the bank allegedly issuing the guarantees in event of default by the Native American Refinery Company (NARCO). However, the bank later informed the plaintiffs the guarantees were fraudulent. And NARCO has defaulted on payment. Apparently, at the time he made the representations, Mr. Newcomb knew the guarantees were to be used as security for a transaction involving the purchase of assets that were located mainly in Utah. Further, the plaintiffs allege the Newcomb defendants still maintain control of the original bank guarantees assigned to the plaintiffs. Allegedly, Mr. Newcomb made his representations about the bond guarantees through a series of contacts, via phone and letter, with the plaintiffs in Utah.

DISCUSSION

The plaintiffs do not claim Utah courts possess general jurisdiction over the Newcomb defendants — they claim only that Utah courts possess specific jurisdiction over them. This court concludes it possesses specific personal jurisdiction over the Newcomb defendants with regard to the RICO claim, and pendent personal jurisdiction over the Newcomb defendants with regard to the remaining claims.

I. RICO Claim

“Before a federal court can assert personal jurisdiction over a defendant in a federal question case, the court must determine (1) ‘whether the applicable statute potentially confers

²Pls.’ Memo. in Opp’n to Mot. to Dismiss, at i, Docket No. 42.

jurisdiction’ by authorizing service of process on the defendant and (2) ‘whether the exercise of jurisdiction comports with due process.’”³ Although not cited by the plaintiffs, the Tenth Circuit’s decision in *Peay v. Bellsouth Medical Assistance Plan*⁴ determines this matter. In *Peay*, the Tenth Circuit concluded that ERISA⁵ authorizes nationwide service of process and, thereby, confers jurisdiction as long as the assertion of personal jurisdiction comports with due process.⁶ The court found the proper due process focus to be “on protecting an individual’s liberty interest in avoiding the burdens of litigating in an unfair or unreasonable forum.”⁷ Fifth Amendment due process, which applies in nationwide service of process cases,⁸ “requires the plaintiff’s choice of forum to be fair and reasonable to the defendant.”⁹

To establish that jurisdiction does not comport with Fifth Amendment due process principles, a defendant must first demonstrate that his liberty interests actually have been infringed. The burden is on the defendant to show that the exercise of jurisdiction in the chosen forum will ‘make litigation so gravely difficult and inconvenient that [he] unfairly is at a severe disadvantage in comparison to his opponent.’¹⁰

³*Peay v. Bellsouth Med. Assistance Plan*, 205 F.3d 1206, 1209 (10th Cir. 2000) (quoting *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 942 (11th Cir. 1997)).

⁴205 F.3d 1206 (10th Cir. 2000).

⁵Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*

⁶*Peay*, 205 F.3d at 1210.

⁷*Id.* at 1211 (citation and internal quotations omitted).

⁸*Id.* at 1212; Michael Goldsmith & Vicki Rinne, *Civil RICO, Foreign Defendants and “ET,”* 73 Minn. L. Rev. 1023, 1057 n.110 (1989)..

⁹*Peay*, 205 F.3d at 1212.

¹⁰*Id.* (citation and internal quotations omitted).

Factors relevant to determining whether the defendant has met his burden “of establishing constitutionally significant inconvenience”¹¹ are: (1) the defendant’s contacts with the forum state; (2) any inconvenience to the defendant of having to defend in a foreign jurisdiction, including (a) the nature, extent, and interstate character of the business, (b) the defendant’s access to counsel, (c) the distance between the defendant and the place the action was brought, (3) judicial economy; (4) the likely location of discovery and the extent to which it will take place outside the defendant’s state of residence or business; and (5) the nature of the activity in question and the impact of it beyond the borders of the defendant’s state of residence or business.¹² “[I]t is only in highly unusual cases that inconvenience will rise to a level of constitutional concern. Certainly, in this age of instant communication, and modern transportation, the burdens of litigating in a distant forum have lessened.”¹³ The court evaluates if the federal interest in litigating the dispute in the plaintiff’s forum outweighs the defendant’s burden only if the defendant establishes litigation in the forum is unduly inconvenient.¹⁴

In *Brightway Adolescent Hospital v. Hawaii Management Alliance Ass’n*, an ERISA case, this court applied the *Peay* test to a personal jurisdiction challenge.¹⁵ In *Brightway*, the defendant

¹¹*Id.* (citation and internal quotations omitted).

¹²*Id.* (citing *Oxford First Corp. v. PNC Liquidating Corp.*, 372 F. Supp. 191, 201 (E.D. Pa. 1974)).

¹³*Id.* at 1212–13 (citations and internal quotations omitted).

¹⁴*Id.* at 1213.

¹⁵139 F. Supp. 2d 1220, 1122–24 (D. Utah 2001).

was a Hawaii corporation and yet, this court found the burden of defending the action in Utah did not rise to the level of a constitutional concern.¹⁶ Paying benefit claims for insureds treated in Utah constituted sufficient contacts with Utah to warrant exercise of personal jurisdiction under ERISA.¹⁷ Due to modern transportation and communication, this court concluded defending the case in Utah would not be unduly inconvenient for the defendant.¹⁸ The defendant was able to access counsel in Utah, and concerns of judicial economy weighed neutrally, so this court concluded the defendant had failed to show its liberty interest was infringed.¹⁹

Like ERISA, RICO authorizes nationwide service of process. Section 1965(d) states that “process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.”²⁰ This is similar to the wording of ERISA.²¹ Because RICO confers jurisdiction by authorizing nationwide service of process, the court need only evaluate if the assertion of jurisdiction over the Newcomb defendants with regard to the RICO claim offends due process.

In this case, the defendants have not established that their liberty interests have been infringed. First, the Newcomb defendants have ample contacts with the forum state. With

¹⁶*Id.* at 1224.

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰18 U.S.C. § 1965(d).

²¹*See* 29 U.S.C. § 1132(e)(2).

regard to the transaction between the plaintiffs and the defendants, Mr. Newcomb confirmed to plaintiff Theodore Hansen that he held valid bank guarantees for Mr. Hansen. On at least five occasions between September and November of 2003, Mr. Hansen spoke with Mr. Newcomb by phone to discuss when NARCO would be able to pay the plaintiffs. Mr. Newcomb indicated he was working closely with Robert McKee — an officer of NARCO and managing director and division head for Newcomb & Co. — to obtain financing for NARCO to pay the plaintiffs. Mr. Newcomb wrote numerous letters and made numerous calls regarding the bank guarantees to other NARCO creditors in Utah. He even negotiated a contract with a NARCO creditor in which he agreed to hold the bank guarantees in escrow and submit them in the event of default by NARCO. These contacts — all of which go to the heart of the plaintiffs' claims against the Newcomb defendants — are ample. They exceed the contacts in *Brightway*, where the defendant merely paid benefit claims for insureds seeking treatment in Utah.

Next, the Newcomb defendants cannot show that any inconvenience in defending this action in Utah rises to constitutional dimensions. Newcomb & Co. appears to be a well-established Massachusetts corporation, with its principal place of business in New Hampshire. Although Utah is geographically distant from New Hampshire, it is not prohibitively far away. In *Brightway*, this court considered Hawaii to not be unduly distant, considering modern communication and transportation options. During the pendency of the alleged fraudulent transaction, Mr. McKee, a director and division head of Newcomb & Co., took several trips to Utah and resided in Utah for two weeks in connection with the transactions. Considering this, it is hard to believe the Newcomb defendants lack the resources to access counsel in Utah. Indeed,

to file the pending motion to dismiss, the defendants have accessed counsel in Utah.

Further, there is no indication Utah is an unfair forum based on considerations of judicial economy or the likely situs of discovery proceedings. In fact, considering that the plaintiffs are all located in Utah and the injury to the plaintiffs occurred in Utah, it is likely most of the discovery proceedings will occur in Utah. Concepts of judicial economy lend to maintaining the case in Utah also. The claims against the Newcomb defendants comprise but a portion of the overall case. The plaintiffs have named numerous other defendants in the suit. Judicial efficiency will be served if all these claims can be considered in the same place. Finally, because the Newcomb defendants verify bank guarantees in business deals, their activities undoubtedly have impact beyond the borders of New Hampshire and Massachusetts. As this case reveals, the Newcomb defendants' activities reach at least as far as Utah.

The Newcomb defendants argue the assertion of jurisdiction by way of RICO's nationwide service of process fails because the plaintiffs provide no facts to support their RICO allegations. However, this argument is misplaced. For one thing, the Newcomb defendants first raised this argument in a reply memorandum, giving the plaintiffs no opportunity to respond. For another thing, the Newcomb defendants asserted this argument in the context of a challenge to jurisdiction. An assertion of failure to state a claim properly belongs in a motion under Federal Rule of Civil Procedure 12(b)(6) — not a jurisdictional challenge. If the Newcomb defendants wished to challenge the sufficiency of the plaintiff's claims, they should have brought a 12(b)(6) motion.

Because the Newcomb defendants have failed to establish they are at a severe

disadvantage by litigating in Utah, the court does not reach the balancing of federal interests with the Newcomb defendants' burden.

II. Pendent Personal Jurisdiction Over the Remainder of the Claims

In conjunction with the assertion of personal jurisdiction over the Newcomb defendants with regard to the RICO claim, the court asserts pendent personal jurisdiction over the Newcomb defendants with regard to the remainder of the claims. Because of this, the court has not determined if it possesses an independent basis for personal jurisdiction over the Newcomb defendants for the plaintiff's other claims. The Tenth Circuit has recognized that pendent personal jurisdiction exists when

a court possesses personal jurisdiction over a defendant for one claim, lacks an independent basis for personal jurisdiction over the defendant for another claim that arises out of the same nucleus of operative fact, and then, because it possesses personal jurisdiction over the first claim, asserts personal jurisdiction over the second claim. In essence, once a district court has personal jurisdiction over a defendant for one claim, it may "piggyback" onto that claim other claims over which it lacks independent personal jurisdiction, provided that all the claims arise from the same facts as the claim over which it has proper personal jurisdiction.²²

The Tenth Circuit has recognized pendent personal jurisdiction as valid "federal common law doctrine."²³

Under the doctrine of pendent personal jurisdiction, the court can assert personal jurisdiction over all of the plaintiffs' claims against the Newcomb defendants. This is because the court possesses specific personal jurisdiction over the Newcomb defendants in relation to the

²²See *United States v. Botefuhr*, 309 F.3d 1263, 1272 (10th Cir. 2002).

²³*Id.* at 1273.

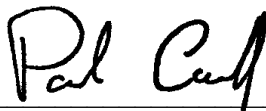
plaintiffs' RICO claims, and the remainder of the claims arise out of a common nucleus of operative fact. The allegations of Mr. Newcomb fraudulently misrepresenting the financial status of NARCO as well as the status of certain bank guarantees in collusion with the other defendants forms the basis of all of the plaintiffs' claims. Because this same core nucleus of facts underlie all of the claims, the court possesses pendent personal jurisdiction over the Newcomb defendants in relation to the remainder of the plaintiffs' claims.

CONCLUSION

In sum, the court's assertion of personal jurisdiction over the Newcomb defendants regarding the RICO claim is appropriate, as RICO allows for nationwide service of process and assertion of jurisdiction does not offend due process. The court possesses personal jurisdiction over the remainder of the plaintiffs' claims against the Newcomb defendants based on the doctrine of pendent personal jurisdiction. Consequently, the Newcomb defendants' motion to dismiss for lack of jurisdiction is DENIED [#24]. To facilitate prompt scheduling of this matter, the court orders the Newcomb defendants to file an answer to the plaintiffs' complaint within fifteen days of the date of this order.

DATED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Paul G. Cassell
United States District Judge

JOHN J. BORSOS, (#384)
JOHN J. BORSOS, P.C.
P.O. Box 112347
Salt Lake City, Utah 84147-2347
Telephone: (801) 533-8883
Fax: (801) 533-8887

Attorney for Plaintiff

FILED
US DISTRICT COURT
2006 OCT 19 A 9:36
DISTRICT OF UTAH
CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TROY JENSEN,)	
)	
Plaintiff,)	
	)	AMENDED SCHEDULING ORDER
vs.)	
	)	Case No.: 2:06-CV-00119
JO ANNE BARNHART, in her)	
capacity as Commissioner of the	)	Honorable Dee Benson
Social Security Administration,)	
)	
Defendant.)	

The Court establishes the following Amended Scheduling Order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed on or before November 20, 2006.
3. Defendant's answer brief should be filed on or before December 20, 2006.
4. Plaintiff may file a reply brief on or before January 15, 2007.

5. Oral arguments are requested by the Plaintiff.

DATED this 19th October, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Dee Benson". The signature is written in black ink and is positioned above a horizontal line.

Honorable Dee Benson
United States District Court

John D. Reinsel
TUMMINELLO & ASSOCIATES, LLC
10349 Watson Road
St. Louis, MO 63127
Phone: (314) 821-3399
Fax: (314) 822-7587
Email: jreinsel@agtlaw.net

Todd E. Zenger (UBN 5238)
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Phone: (801) 328-3600
Fax: (801) 321-4893
Email: tzenger@kmclaw.com

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

KLEIN-BECKER USA, LLC, a Utah Limited
Liability Company, and
KLEIN-BECKER IP HOLDINGS, LLC, a Nevada
Limited Liability Company

Plaintiffs,

vs.

PATRICK ENGLERT *dba* MR. FINEST
SUPPLEMENTS, STRIVECTIN-SALES, SKIN-CREAM
SALES, STRIVECTINSALES@AOL.COM,
MRFINEST.COM, MRFINESTSUPPLEMENTS.COM,
MR. FINEST SUPPLEMENTS, INC., and John Doe
Corporations I-X,

Defendants.

Civil Action No. 2:06-CV-00378 TS

Judge Ted Stewart

Magistrate Judge David O. Nuffer

ORDER GRANTING DEFENDANTS'
MOTION FOR EXTENSION OF TIME
TO RESPOND TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

Upon motion of Defendants, and for good cause shown,

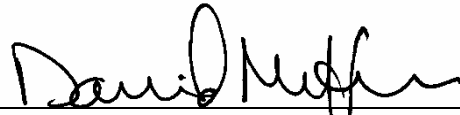
IT IS ORDERED:

Defendants' motion (docket no. 60) for a two-week extension of time in which to respond to Plaintiffs' First Amended Complaint is GRANTED. Defendants have up to and including October 23, 2006, in which to file a response.

DATED this 18th day of October, 2006.

BY THE COURT

By: _____

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

MAGISTRATE JUDGE DAVID NUFFER
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2006, the foregoing [PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' FIRST AMENDED COMPLAINT was electronically filed with the Clerk of the Court using the EC/CMF system, which sent notification of such filing to the following:

Jason Kerr (E-Filer)
Klein-Becker USA, LLC
5742 Harold Gatty Drive
Salt Lake City, Utah 84116

Gary F. Bendinger (E-Filer)
David A. Greenwood (E-Filer)
Scott D. McCoy (E-Filer)
Christopher B. Sullivan (E-Filer)
HOWREY
170 South Main Street, Suite 400
Salt Lake City, Utah 84101-3636

s/ Margaret L. Carlson

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Ryan V. Sweat,

Plaintiff,

vs.

Jordanelle Special Service District,

Defendant.

SCHEDULING ORDER

Case No. 2:06CV528DAK

District Judge Dale A. Kimball

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>9/25/06</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>10/9/06</u> |
|
 | | |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>25</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>25</u> |
| | f. Maximum requests for production by any Party to any Party | |
| | | <u>DATE</u> |

3. **AMENDMENT OF PLEADINGS/ADDING PARTIES²**
 - a. **Last Day to File Motion to Amend Pleadings** 3/30/07
 - b. **Last Day to File Motion to Add Parties** 3/30/07
4. **RULE 26(a)(2) REPORTS FROM EXPERTS³**
 - a. **Plaintiff** 6/29/07
 - b. **Defendant** 7/27/07
 - c. **Counter Reports** 8/31/07
5. **OTHER DEADLINES**
 - a. **Discovery to be completed by:**
Fact discovery 6/1/07
Expert discovery 9/28/07
 - b. **(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)**
 - c. **Deadline for filing dispositive or potentially dispositive motions** 11/2/07
6. **SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**
 - a. **Referral to Court-Annexed Mediation** N
 - b. **Referral to Court-Annexed Arbitration** N
 - c. **Evaluate case for Settlement/ADR on** 6/1/07
 - d. **Settlement probability:**
7. **TRIAL AND PREPARATION FOR TRIAL:**
 - a. **Rule 26(a)(3) Pretrial Disclosures⁴**
Plaintiffs **2/5/08**
Defendants **2/19/08**
 - b. **Objections to Rule 26(a)(3) Disclosures**
(if different than 14 days provided in Rule)

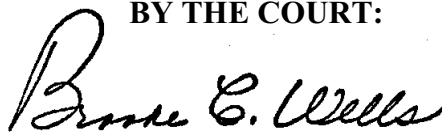
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		3/3/08
d.	Settlement Conference ⁶ on or before		
e.	Final Pretrial Conference	2:30 pm	3/17/08
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>5</u>	<u>8:30 am</u> <u>3/31/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 17 day of October, 2006.

BY THE COURT:



**Brooke C. Wells
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Sweat vs Jordanelle Special Svs Dist. et al 2 06 cv 528 DAK alp.wpd

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

FILED
U.S. DISTRICT COURT

Mark Mansfield, et al,

Plaintiff,

vs.

Anna Angwihand Does 1 through X,

Defendant.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 2:06CV372DB 572 DB

District Judge Dee Benson

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for 10/11/06, at 9:00 a.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. | PRELIMINARY MATTERS | <u>DATE</u> |
|----|--|----------------|
| | Nature of claim(s) and any affirmative defenses: | |
| a. | Was Rule 26(f)(1) Conference held? | <u>9/18/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | |
-
- | 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|----|--|---------------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>25</u> |

f. Maximum requests for production by any Party to any Party 50
DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

a. Last Day to File Motion to Amend Pleadings 2/1/07
b. Last Day to File Motion to Add Parties 2/1/07

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

a. Plaintiff 3/30/07
b. Defendant 4/30/07
c. Counter Reports 5/1/07

5. OTHER DEADLINES

a. Discovery to be completed by:
Fact discovery 3/16/07
Expert discovery 5/16/07
b. *(optional)* Final date for supplementation of disclosures and
discovery under Rule 26 (e)
c. Deadline for filing dispositive or potentially dispositive
motions 6/1/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation N
b. Referral to Court-Annexed Arbitration N
c. Evaluate case for Settlement/ADR on 3/16/07
d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

a. Rule 26(a)(3) Pretrial Disclosures⁴
Plaintiffs 9/12/07
Defendants 9/26/07
b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

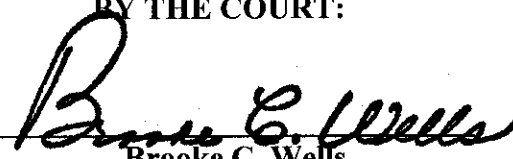
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		10/10/07
d.	Settlement Conference ⁶ on or before		
e.	Final Pretrial Conference	2:30 pm	10/24/07
f.	Trial	<u>Length</u>	<u>Time</u>
	i. Bench Trial	<u>2</u>	<u>8:30 am</u>
	ii. Jury Trial		<u>11/5/07</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13 day of October, 2006.

BY THE COURT:


Brooke C. Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

NOVEX BIOTECH™, L.L.C. and
WESTERN HOLDINGS, L.L.C.,

Plaintiffs,

v.

ENDO PHARMACEUTICALS, Inc., a
Delaware company,

Defendant.

**ORDER EXTENDING TIME TO FILE
OPPOSITION MEMORANDUM**

Civil No. 2:06cv00638 PGC

Judge Paul G. Cassell

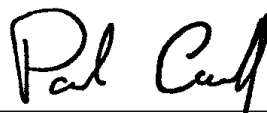
Plaintiffs and defendant have once again filed with the court a stipulated motion for the extension of time for plaintiffs to file an opposition memorandum (#17). The parties represent additional time is needed to accommodate ongoing settlement discussions. The court GRANTS in part and DENIES in part the stipulated motion (#17).

The court grants the plaintiffs an extension of time in which to file their opposition but denies the October 16, 2006, deadline provided for in the motion. Having been advised by both parties that more time is needed, the court extends the deadline for plaintiffs to file their opposition to **October 31, 2006**. Because this is the second motion to extend time to file an opposition memorandum that the court has granted, the parties are advised that absent extraordinary circumstances, the court will not grant any further motions to extend this deadline.

SO ORDERED.

DATED this 19th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style with a large initial "P" and "C".

The Honorable Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL JOHN NIKOLS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER DIRECTING BRIEFING

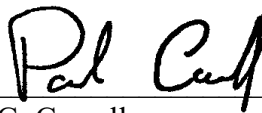
Case No. 2:06-cv-00889

The court directs the United States to respond to Michael John Nikols' motion for relief pursuant to 28 U.S.C. § 2255. The government must file a responsive briefing within 45 days of the date of this order.

SO ORDERED.

DATED this 19th day of October, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge

FILED

United States District Court
District of Utah

OCT 10 2006

ROBERT T. BRAITHWAITE
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Samuel G. Williams

Case Number: **2:06-po-00694-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Pro Se**

Date of Imposition: October 5, 2006

DEFENDANT:

☒

pleaded guilty to count(s)

Defendant was found guilty at trial

Title & Section

36 CFR 261.55(d)

Nature of Offense

Being on trail with unauthorized vehicle

Count
Number(s)

I

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

The Defendant is placed on bench probation for a period of 2 months. The Defendant shall pay fine and fees in full on or before the expiration of the probation period.

CRIMINAL MONETARY PENALTIES

TOTAL FINE: Count I: \$ 125.00

ASSESSMENT: Count I: \$ 25.00

Due by December 5, 2006

Date

10-10-06

Robert T. Braithwaite
Robert T. Braithwaite, United States Magistrate Judge
Name and Title of Judicial Officer